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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [REDACTED] Office: LIMA, PERU

Date: JAN 09 2003

IN RE: Applicant: [REDACTED]

Application: Application for Waiver of Grounds of Inadmissibility under
Section 212(a)(9)(B)(v) of the Immigration and Nationality Act,
U.S.C. 1182(a)(9)(B)(v)

IN BEHALF OF APPLICANT: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Lima, Peru, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be dismissed.

The applicant is a native and citizen of Peru who was found by a consular officer to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The applicant is married to a naturalized United States citizen and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to travel to the United States to reside with his spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On appeal, the applicant asserted that his wife is deeply depressed and suffering from financial problems due to the couple's separation. In support of the appeal, the applicant submitted photographs of the couple's wedding and documents concerning telephone and mailing expenses the couple have incurred due to their separation.

On motion, the applicant's spouse indicates that she has had personal difficulties supporting her family during the applicant's absence from the United States. In support of the motion, she submits letters from her and her spouse providing additional information concerning the economic and family problems the couple are experiencing. In a joint letter dated February 26, 2002, the couple note that section 212(A)(9)(B)(iii)(III) of the Act provides for an exception to unlawful presence for family unity applicants. However, the couple do not claim that the applicant is eligible for a family unity exception and provide no evidence to support such a claim.

8 C.F.R. 103.5(a)(1)(i) states, in pertinent part, that " . . . [a]ny motion to reconsider . . . must be filed within 30 days of the decision that the motion seeks to reconsider . . . " 8 C.F.R. 103.5(a)(4) states, in pertinent part, that " . . . [a] motion that does not meet applicable requirements shall be dismissed "

In the instant case, the Associate Commissioner's decision to dismiss the applicant's appeal is dated June 13, 2001. The motion to reconsider submitted by the applicant's spouse is dated May 17, 2002, more than eleven months after the Associate Commissioner's decision was rendered.

8 C.F.R. 103.5(a)(2) also states, in pertinent part, that "[a] motion to reconsider must state the reasons for reconsideration and

be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision."

The applicant's motion to reconsider is not supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. The motion also does not establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The applicant's motion is not timely and does not meet the applicable requirements. 8 CFR 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the Associate Commissioner will not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The motion is dismissed.